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**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

FILED  
OCT 23 AM 8:10

RICHARD R. ROLL

STATE OF TENNESSEE, *ex rel.*, ROBERT  
E. COOPER, JR., Attorney General &  
Reporter,

Plaintiff,

v.

THE KROGER CO., an Ohio corporation,  
on behalf of itself and its affiliates  
and subsidiaries dba KROGER, RALPHS,  
KING SOOPERS, CITY MARKET,  
DILLONS, SMITH'S, FRY'S, QFC,  
BAKER'S, PRICE RITE, OWEN'S, JAYC,  
HILANDER, GERBES, PAY LESS,  
FOOD4LESS, FOODS CO, FRED MEYER,  
FRY'S MARKETPLACE, SMITH'S  
MARKETPLACE, KROGER  
MARKETPLACE, TURKEY HILL, KWIK  
SHOP, LOAF 'N JUG, QUIK STOP, AND  
TOM THUMB,

Respondent.

R. Thomas

No. 07C3080

**Petition**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee,  
(hereinafter "Attorney General"), files this Petition pursuant to his civil law enforcement  
authority under Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of  
1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Commerce

and Insurance (hereinafter “the Division”) and the Attorney General, who serves as the civil law enforcement authority under the Act, acting pursuant to the Act, have investigated as part of a multistate group practices of The Kroger Co., an Ohio corporation doing business as Kroger (hereinafter, “Kroger”) which currently has 120 stores in Tennessee, including 45 in Nashville, Tennessee. Tennessee is Kroger’s tenth largest market in the country. Kroger operates 2,468 supermarkets in 31 states. Upon completion of such investigation, it has been determined that certain of Kroger’s acts and practices, more specifically described in Paragraph 2 of this Petition, if present in Tennessee would constitute unfair or deceptive acts or practices which could affect the conduct of trade or commerce in the State of Tennessee and would be in violation of Tenn. Code Ann. § 47-18-104(a), and further that such acts and practices would constitute violations of Tenn. Code Ann. §§ 47-18-104 (b)(12), (b)(27), and Public Chapter No. 121, which identifies newly-numbered Tenn. Code Ann. § 47-18-104 (b)(3).

2. Based upon the multistate investigation of Kroger, the Division and the Attorney General allege the following:

- (A) Kroger operates supermarkets which sell, among other things, tobacco products.
- (B) Underage access to tobacco products constitutes a severe and continuing threat to public health based on the following facts:
  - 1. More than 80% of regular adult smokers began smoking as children;
  - 2. Every day in the United States about 2,000 children begin smoking cigarettes, and one third of those will one day die from a tobacco-related disease;
  - 3. The younger a person begins smoking, the more likely it is that he or she will be unable to quit later in life and will suffer a disease attributable to tobacco use;
  - 4. Youth demonstrate signs of addiction after smoking only a few

cigarettes;

5. An estimated 90 million packs of cigarettes are sold illegally to children each year nationwide;
6. More than 400,000 Americans die each year from diseases caused by tobacco use; and
7. The Federal Food and Drug Administration data indicates that, as an average among U.S. retailers, one in every four attempts by a person 15 to 17 years old to purchase cigarettes over the counter results in a sale.

- (C) Sales of cigarettes to underage persons would constitute unfair and deceptive acts or practices because they are prohibited for sale to minors by state law.

3. Upon completion of the multistate investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance (“Assurance”) in accordance with the provisions set forth in Tennessee Code Annotated § 47-18-107.

4. The Attorney General, through the multistate group, entered into negotiations with Kroger and the parties have agreed to, and the Division has approved, the Assurance filed contemporaneously herewith.

5. Kroger does not admit liability for any of the alleged acts or practices described or referred herein nor does Kroger agree that the Tennessee Consumer Protection Act creates any liability on it in this regard. Kroger, however, does not admit liability for the allegations in Paragraphs 1 and 2 (A-C).

6. Kroger has reaffirmed its continuing commitment to responsible marketing of this age-restricted product and to the health and welfare of our nation's youth, and is committed to employing and enhancing tobacco retailing practices that are designed to prevent the sale of tobacco products to minors.

7. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

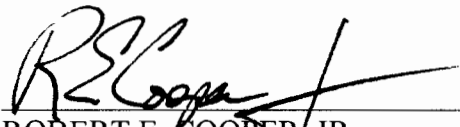
8. The Division, the Attorney General, and Kroger, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance and join in its filing.

PREMISES CONSIDERED, Petitioner prays:


1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.

RESPECTFULLY SUBMITTED,




ROBERT E. COOPER, JR.  
Attorney General and Reporter  
B.P.R. No.10934



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I hereby certify that this is a true copy  
of the instrument filed in my office  
this 23<sup>rd</sup> day of Oct 20, 07  
BY  RICHARD A. BOOKER Clerk  
Deputy Clerk